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Report of the Special Rapporteur on the Rights of Indigenous Peoples on her mission to Brazil

Addendum

Comments of the Government of Brazil to the report of the Special Rapporteur*

* The document is circulated as received.

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1. The Brazilian government welcomes the report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, about her visit to Brasil from 7 to 17 March 2016. We are studying carefully her remarks.

2. Nevertheless, we cannot agree with the Rapporteur's statement in the introductory paragraph of the report according to which, between the visit of former Special Rapporteur James Anaya in 2008 and her own visit, there was "a disturbing absence of progress in the implementation of his recommendations and the resolution of long-standing issues of key concern to indigenous peoples", as well as "a worrying regression in the protection of indigenous peoples' rights". The Brazilian government doesn't underestimate the challenges faced in the promotion and protection of the rights of indigenous peoples. Nonetheless, as shown in the comments below, significant positive developments have taken place.

1. Overall National Institutional Framework

3. Brazil has a multi-level institutional framework for the promotion and protection of the rights of indigenous peoples and individuals, consistent with the multifaceted nature of the issues at hand. The mainstay of this framework is the Federal Constitution of 1988, which guarantees to indigenous peoples collective rights to "their social organization, customs, languages, creeds and traditions", as well as to "the lands they traditionally occupy". Naturally, indigenous individuals also enjoy the same rights as all Brazilian citizens, including the rights to health and education.

4. The leading government institution responsible for the promotion and protection of the rights of indigenous peoples is the Ministry of Justice and Citizenship (MJC) and the National Foundation for Indigenous Peoples (FUNAI). FUNAI works under the Ministry of Justice and Citizenship, according to Law 5,371/1967 and Decree 7,778/2012.

5. Since the visit of Special Rapporteur Victoria Tauli-Corpuz last March, a noteworthy reform in the government is the incorporation by MJC of the former Ministry for Women, Youth, Racial Equality and Human Rights (MMJIRDH). This merger is a positive development for indigenous peoples since it congregates under a single institution several key government functions. Important policies and programs previously managed by MMJIRDH in areas such as gender equality, protection of human rights defenders and the fight against racial discrimination are now under the single responsibility of the Ministry of Justice and Citizenship.

6. In a recent official statement (at the National Council for Indigenous Policy - see below), the Minister of Justice and Citizenship, Alexandre de Moraes, reaffirmed the commitment of the government to the promotion and protection of the rights of indigenous peoples. He manifested the administration's intention to build a new relationship with the indigenous peoples guided by respect and recognition of their rights. He stated that none of the land demarcation measures taken by the previous administration was or will be revoked. According to him, the overriding priority of the current administration is to guarantee the security of indigenous communities, as illustrated by his decision, together with the Governor of Mato Grosso do Sul, to send federal troops to that State immediately after a conflict broke out between local farmers and indigenous peoples last June. The other key priority of the government is to find long-term solutions for land disputes involving indigenous peoples. To that end, the Minister is holding discussions with the Supreme Court in order to address the key legal issues and make sure that the next administrative measures to demarcate indigenous lands will be in accordance with the Supreme Court's jurisprudence.

7. The Minister also stated his commitment to strengthening the National Foundation for Indigenous Peoples. He noted that current resource constraints faced by FUNAI have to

do with budget reductions approved last year, and said he will work to improve the funding of FUNAI for 2017. The Minister also noted that a new selection process has taken place recently to hire an additional two hundred permanent staff for the Foundation, and that reductions in discretionary-contract staff ("cargos de confiança"), ordered throughout the government, will only be implemented in FUNAI when the newly-hired servants will be available to fill the same positions.

8. In order to discuss the overall relationship between the State and indigenous peoples, the National Conference for Indigenous Policy was held in 2015 in Brazil. The conference mobilized several thousand indigenous representatives in over one hundred local and regional meetings held throughout the country and concluded with a final Plenary in Brasília in December, with the presence of over 1,500 indigenous peoples' delegates, in addition to civil society and government representatives. The Conference adopted an extensive report with recommendations, including for the creation of the National Council for Indigenous Policy (CNPI), intended as the main forum for discussing and defining policies for indigenous peoples in Brazil.

9. The creation of the Nacional Council for Indigenous Policy was announced by the President of the Republic in the closing Plenary of the 2015 National Conference (Decree 8,593/2015). CNPI congregates representatives of indigenous peoples from all regions of the country, two representatives of human rights NGOs working with indigenous issues, and officials from relevant federal agencies. The Presidency of CNPI rotates between the government and indigenous peoples and Resolutions are adopted either by consensus or by vote. In the latter case, indigenous peoples' representatives and government officials have equal voting rights. CNPI already held two ordinary sessions, in April and August 2016. In both meetings, the Council adopted advisory Resolutions about land demarcation and other rights of indigenous peoples.

10. Another key institution in this domain is the National Council for Human Rights (CNDH), established by Law 12,986/2014 as a successor to the Council for the Defense of the Rights of the Human Person (CDDPH, Law 4,319/1964). CNDH is comprised of twenty-two members including government officials, parliamentarians, representatives of the Judiciary and the Federal Prosecution Service, and nine representatives of NGOs. CNDH has recently set up a Working Group on the Rights of Indigenous Peoples in the South of Brazil (States of Rio Grande do Sul, Santa Catarina and Paraná). The Working Group presented its report last August 2016, indicating the problems identified and proposing corrective actions.

11. As exposed below, in addition to this overall institutional framework, several other government agencies deal with specific sectorial issues, such as education, healthcare, sustainable development etc.

2. International Institutions for the Promotion and Protection of the Rights of Indigenous Peoples

12. Brazil is an active participant in all key forums and institutions devoted to the promotion and the protection of the rights of indigenous peoples. It is one of the 22 countries that have ratified ILO Convention 169 and supported the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the American Declaration on the Rights of Indigenous Peoples (ADRIP). As a member of the Group of Friends of Indigenous Peoples, Brazil joined forces with other like-minded countries to ensure a balanced and ambitious outcome for the 2014 World Conference on Indigenous Peoples.

13. Brazil believes that ADRIP, UNDRIP and ILO Convention 169 are progressive documents that strike a fair balance between the rights of indigenous peoples and those of the States in which they live. UNDRIP, for instance, provides that indigenous peoples have "the right to self-determination", to "autonomy or self-government in matters relating to their internal and local affairs". They are also entitled "to maintain and strengthen their distinct political, legal, economic, social and cultural institutions" (Arts. 3-5). At the same time, "every indigenous individual has the right to a nationality" and indigenous peoples "have the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State" (Arts. 5-6). Consistent with the balance previously mentioned, these rights have to be taken together with the provisions of Article 46 of UNDRIP, which states that nothing in the Declaration may be "interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States". UNDRIP Preambular Paragraph 18 also notes that the rights and guarantees incorporated in the Declaration have been agreed upon on the understanding that "the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith".

14. Another noteworthy issue addressed in all three aforementioned documents concerns consultations to indigenous peoples referring to projects that may affect them. According to these documents, governments are required to carry out good-faith consultations with indigenous peoples' representatives "with the objective of" (ILO-169), or "in order to obtain" (UNDRIP) their free and informed consent, in order to be able to carry out said projects. In exceptional cases, such as the relocation of indigenous peoples, the disposal of hazardous materials in their lands, or the subtraction of cultural and religious objects from indigenous peoples, free prior and informed consent is an absolute condition. In other cases, the main commitment of States is, as mentioned earlier, to carry out good faith consultations and to seek to obtain indigenous peoples' consent.

3. Access to Justice by Indigenous Peoples and Individuals in Brazil

15. As all other Brazilian citizens, indigenous individuals have the constitutional right to seek legal redress whenever they believe their rights have been violated. In addition, indigenous peoples and communities also have the collective right to act as plaintiffs in legal cases (Art. 232). In addition, the Federal Prosecution Service (MPF), which is an autonomous body distinct from the Executive and the Judiciary, is mandated by the Constitution (Art. 129-V) to "defend judicially the rights and interests" of indigenous peoples. In the exercise of this responsibility, the Federal Prosecution Service is particularly active on issues relating to land rights and to cases of violence against indigenous peoples, among others. A recent example of the operation of the Federal Prosecution Service is the establishment earlier this year of the Avá Guarani Task Force, to investigate instances of violence against that indigenous people. As a result of this work, on 18 August the Federal Police arrested five individuals accused of participating in an attack against a Guarani-Kaiowá community in the Municipality of Caarapó (Mato Grosso do Sul State), following arrest warrants requested by MPF and granted by the Judiciary.

4. Demarcation of Indigenous Lands

16. Consistent with the aforementioned constitutional provisions, the Brazilian government has already demarcated 462 indigenous lands, covering an area of 103.9 million hectares, corresponding to 12.2 % of the national territory. Between the visit of Special Rapporteur James Anaya in August 2008, and that of Victoria Tauli-Corpuz in March 2016, 35 new indigenous lands have been demarcated by Presidential Decree, covering an area of 9.1 million hectares, a combined surface roughly equivalent to that of Portugal. In the same period, Ministerial Ordinances (second before last stage of demarcation) have been issued for an additional 47 indigenous lands with a total area of 2.9 million hectares. Technical Studies (first stage of demarcation) have also been published for 62 additional indigenous lands totaling 7.4 million hectares.

5. Healthcare

17. In 2010, the Special Secretariat for Indigenous Healthcare (SESAI) was established at the Ministry of Health. SESAI is headed by a Vice-Minister and, since its creation, the number of professionals dedicated to providing healthcare for indigenous individuals has grown by almost 50%. In 2015, SESAI's staff comprised 13.438 professionals, out of whom 45% were indigenous. Since 2013, the number of doctors has increased by 79% and now these professionals operate in all 34 local districts managed by SESAI, covering the whole Brazilian territory. SESAI also has an integrated policy in the area of mental health. Its multidisciplinary teams in this area employ more than 100 psychologists (a 130% increase compared to 2012) and several other professionals. One of the main priorities in this area is the prevention of suicide among indigenous youth. This challenge is addressed with a comprehensive set of actions, with special attention to family and local community environments. SESAI is also responsible for the provision of sanitation services. Significant developments have also taken place in this domain, most notably with regard to water supply, which now reaches 2.500 of the 5.103 indigenous villages that exist in Brazil. SESAI develops and implements its policies in an open and participatory manner. It has already organized three National Conferences for Indigenous Peoples' Healthcare Policies. The last Conference, held in 2013, convened hundreds of meetings all over Brazil in preparation for the final plenary in Brasilia, presided over by the Minister of Health, and mobilized a total of more than 30.000 persons.

6. Education

18. The national Constitution guarantees the right to bilingual, culturally appropriate basic education to the nearly one million Brazilian indigenous citizens, who speak more than two hundred languages and belong to over three hundred peoples. The two main permanent forums for discussing and designing policies in this domain are the National Education Council (CNE), which is the appropriate place for discussing indigenous education within wider national education policies; and the National Commission for Indigenous School Education (CNEEI), which conducts more focused analyses and debates. In addition to these permanent frameworks, the National Conference on Indigenous School Education (ICONEEI), held in 2009, provided important guidance for the development of policies in this domain. Preparations for the Second National Conference, to be held in November 2017, are already underway. One of the main goals of the II CONEEI will be to outline the indigenous component of the new National Education System, to be submitted to the National Congress afterwards.

19. Since 2009, the implementation of indigenous education is led by the Secretariat for Continued Education, Literacy, Diversity and Inclusion of the Ministry of Education (SECADI/MEC), which operates in close co-ordination with State and Municipal authorities. To improve dialogue and coordination between indigenous peoples and government authorities at these three levels, and to make the corresponding policies more attuned to the diversity of Brazilian indigenous peoples, a new managing structure has been put in place since late 2008: the Ethnoeducational Territories (TEEs). Jointly defined by State authorities and indigenous peoples, the TEEs cover portions of the national territory inhabited by peoples with significant commonalities - political or economic relations; shared historical origins or cultural practices; linguistic similarities - irrespective of administrative geographic divisions (State and Municipal boundaries). In March 2016, when Special Rapporteur Victoria Tauli-Corpuz visited Brazil, 25 TEEs were already implemented, 3 were in the course of implementation, and 13 were at the stage of consultation with the indigenous peoples concerned. In 2014, when the latest survey was carried out, there were 3,141 indigenous schools in Brazil, employing 18,456 teachers, including 10,308 indigenous teachers, who cater for 239,665 students. It should also be noted that a sizeable amount of indigenous children and youth live in cities and attend regular public schools (38.5% of Brazilian indigenous citizens are urban dwellers).

20. In addition to basic education, over 22,000 indigenous people are now attending Brazilian universities and this number is increasing at a rapid pace. One significant reason for this increase is the establishment, in 2012, of a quota system for indigenous and other racial minorities in federal universities and technical institutes (Law 12.711). Another important factor is the creation, in 2013, of scholarships specifically designed for indigenous citizens, which in the following year supported 3,149 students attending courses in federal higher education institutions. In October 2016, the Ministry of Education will start the operation of a new program offering scholarships for students belonging to indigenous peoples and other minorities to pursue undergraduate and graduate studies in foreign universities ("Programa de Desenvolvimento Acadêmico Abdias Nascimento").

7. Sustainable Development

21. Consistent with Article 29 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Article XIX of the American Declaration on the Rights of Indigenous Peoples (ADRIP), the Brazilian government launched in 2012 the National Policy for Environmental and Territorial Management of Indigenous Lands (PNGATI). The process of elaborating this policy was an achievement in itself, due to its participatory nature. The proposal was prepared by a 12-member working group, half of whom were indigenous, and went through five consultation sessions. These public hearings had the participation of over 1.200 representatives from 186 Brazilian indigenous peoples. The main objective of this policy is to protect, recover and foster the sustainable use of natural resources in indigenous territories. This goal is pursued through the elaboration and implementation of territorial and environmental plans for each indigenous land (PGTAs). The implementation of these plans is also monitored by indigenous peoples' representatives. This activity will be carried out by more than 40 regional committees, which are currently being set up.

22. In addition to this primary focus on sustainable development at the local level, the policy also provides for the participation of representatives of indigenous peoples in institutions in charge of regional and national environmental policies that affect their territories, such as river-basin committees and the Brazilian Climate Change Forum. The implementation of PNGATI is sponsored by the Amazon Fund ("Fundo Amazônia"). Nine PGTA projects were selected in the first call for proposals launched by the Amazon Fund in 2015, with a total value of more than US$ 24 million. Three of these projects, worth more

than US$ 8 million, were already under implementation by the end of 2015. New calls for proposals will be launched in the near future. In addition to PNGATI, the Amazon Fund, supports many other projects to foster sustainable development in indigenous lands. Between its establishment in 2008 and 2015, the Fund has financed projects to the tune of more than US$ 36 million in indigenous lands.

8. Government Action in Instances of Violence against Indigenous Individuals and Peoples

23. As stated by the Minister of Justice and Citizenship, the Brazilian government works consistently to protect indigenous individuals and peoples from any sort of violence. As a rule, maintenance of law and order is the responsibility of State-level police. When necessary, and in coordination with local authorities, Federal government forces may also be mobilized (National Security Force - FNS; Federal Police - PF; Federal Road Police - PRF; and, exceptionally, the Armed Forces).

24. Judiciary police functions at the national level are discharged by the Federal Police. In 2016, the Federal Police has already carried out 12 criminal inquiries in the State of Mato Grosso do Sul alone. Last August, the Federal Police detained five individuals accused of participating in an attack against a Guarani-Kaiowá community in Caarapó, following arrest warrants requested by the Federal Prosecution Service (MPF) and granted by the Judiciary.

25. Larger law and order operations by Federal government troops are usually carried out by the National Security Force (FNS). In the State of Mato Grosso do Sul, FNS has carried out 6 operations since 2011, the latest of which last June in the municipality of Caarapó, following confrontations between local farmers and a community of the Guarani-Kaiowá people. In the longest FNS operation in that State, called "Tekohá", federal forces carried out protective actions for five years. In exceptional cases, the Armed Forces may be mobilized in operations to reestablish and maintain law and order (GLO). Between September and November 2015, Dourados Operation mobilized Army forces in the south of Mato Grosso do Sul following a violent confrontation between local farmers and a Guarani-Kaiowá community in the municipality of Antônio João. Another such mobilization, called Ilhéus Operation, was carried out in the south of the State of Bahia between February and July 2014.

26. In addition to such large law and order operations, another important government action is the National Program for the Protection of Human Rights Defenders (PNPDDH). Established in 2007 (Decree 6,044), the program has developed significantly since then. PNPDDH currently offers protection for 101 indigenous leaders, corresponding to 28% of all persons protected by the program.

27. In her report, Special Rapporteur quotes a study by the Missionary Council for Indigenous Peoples (CIMI) and states that 138 indigenous individuals were murdered in 2014. The loss of human lives is unacceptable in any circumstances. The data presented need to be critically analyzed. It should be noted that the data in question are provided by the Special Secretariat for Indigenous Healthcare (SESAI) and refer to a population of around half a million Brazilian citizens who live in indigenous villages. These data are aggregated and do not specify the causes of death. In the same report, CIMI presents its own survey with qualitative information referring to 67 cases of violent deaths of indigenous individuals in that same year. An analysis of this latter survey indicates that only 6 of the cases mentioned appear related to land disputes. Of the remaining 60 cases, 13 appear to be instances of domestic violence, 29 were due to fights between indigenous individuals, and the remaining 19 have unclear causes.

9. Large Infrastructure Projects

- São Luiz Project, Tapajós River

28. The São Luiz hydroelectric project in the Tapajós River is illustrative of the functioning of Brazilian institutions in charge of the promotion and protection of the rights of indigenous peoples. The project underwent a thorough licensing process, which included consultations with the Munduruku indigenous people, who live in the area of influence of the project. Taking into account objections by Munduruku leaders, as well as statements by FUNAI and the Federal Prosecution Service, to the effect that the projected lake would require the relocation of three indigenous villages, the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) concluded that the project violated constitutional provisions (Art. 231) and refused to license it. Following the decision by the licensing authority, the Minister of Mines and Energy stated that the current administration has no intention to resume studies about hydroelectric projects in that region.

- Belo Monte Project, Xingu River

29. With reference to the Belo Monte case, it must be noted that human rights issues are inserted into the rules and obligations regarding environmental licensing of large projects in Brazil. According to specific rules in the matter, such as Resolution 1/1986 of the National Council on the Environment (CONAMA), infrastructure projects must take into account impacts of their activities in: i) the health, safety and well-being of the population; ii) the social and economic activities; iii) the biota; iv) the sanitary and aesthetic conditions of the environment; v) the quality of environmental resources.

30. Furthermore, it is incorrect to affirm that mitigation measures of projects with environmental impact are inadequate. Such projects are implemented in full compliance with social and environmental regulations and with governmental oversight. Besides bodies such as the Judiciary, and the Federal Prosecution Service, it needs to be understood that a great number of governmental bodies take part in the process of licensing the infrastructure project, including those responsible for issues related to indigenous peoples (FUNAI) and peoples of African descent (Fundação Cultural Palmares). The Brazilian government does not agree with assertions of the Report that local communities have not been consulted with or informed about the Belo Monte project. Among other measures, thousands of people took part in public hearings regarding the plant's Basic Project and dozens of meetings about this issue have been organized since June 2011 with a large number of social, political and academic institutions, all in accordance with ILO Convention 169. Moreover, the "suspensão de segurança" mechanism is a procedural instrument, established in the Brazilian legal framework, which aims at suspending the effects of a preliminary judicial decision that may seriously harm, among other spheres, public health and the economy. It is an important instrument, often used by the Federal Prosecution Service and FUNAI in defense of specific interests of indigenous peoples. Social benefits of the Belo Monte project must not go unnoticed. Parallel projects in the Belo Monte area have greatly benefited the local population, such as a hospital in Altamira, a successful program for combatting malaria and the building of sewage systems. Also, it is important to highlight that the dam is not located in Indigenous Lands, that not one of those areas has been flooded and that no indigenous village has been removed.

31. Finally, regarding paragraph 37 of the Report, it must be underlined that the suspension of the construction of the hydropower dam is not part of the Inter-American Commission on Human Rights precautionary measures since June 2011, when the IAHRC issued new precautionary measures. The scope of the precautionary measures was modified. We deem it important to put it on record that Brazil is meeting the requests of the IAHRC.

10. Food Security

32. More than 105,000 indigenous families, corresponding to about 47% of the Brazilian indigenous population, are enrolled in the minimum income program called "Bolsa Familia" ("Family Grant") and receive a monthly cash subsidy. The Ministry of Social and Agricultural Development (MDSA), responsible for the program, has made some adaptations to cater to the particularities of indigenous peoples. MDSA is currently studying a recent assessment of possible positive or negative impacts of Bolsa Familia on different indigenous peoples, and is considering new adaptations to the program. In addition to Bolsa Familia, MDSA also has programs in the areas of agricultural extension and water supply for indigenous peoples.